SERVED: July 17, 2008

NTSB Order No. EA-5398

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 16th day of July, 2008

Petition of NELSON F. TCHAKIRIDES for review of the denial by the Administrator of the Federal Aviation Administration of the issuance of an airman medical certificate.	)	Docket SM-4861

OPINION AND ORDER

Petitioner, who proceeds pro se, has appealed from the written initial decision and order Chief Administrative Law Judge William E. Fowler, Jr., issued in this proceeding on February 29, 2008.[1] By that decision, the law judge granted the Administrator's motion for summary judgment, and thereby denied

[1] A copy of the law judge's order is attached.

petitioner's petition for a third-class medical certificate. We deny the appeal.

The Administrator's motion for summary judgment, dated February 7, 2008, alleged that petitioner was not qualified to hold an airman medical certificate based on 14 C.F.R. §§ 67.111(a)(3), 67.211(c), and 67.311(c).[2] In particular, the Administrator's motion alleged that on November 2, 2006, petitioner applied for a third-class medical certificate and underwent an examination by Kenneth V. Schwartz, M.D., who is a designated aviation medical examiner. Dr. Schwartz deferred issuing the certificate, pending further evaluation. On November 8, 2007, Federal Air Surgeon Frederick E. Tilton, M.D., issued a final denial of petitioner's application for a medical certificate, pursuant to 14 C.F.R. §§ 67.111(a)(3), 67.211(c),

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[2] Title 14 C.F.R. § 67.311(c) states, in relevant part, the following:

§ 67.311 Cardiovascular.

Cardiovascular standards for a third-class airman medical certificate are no established medical history or clinical diagnosis of any of the following:

* * * * *

(c) Coronary heart disease that has required treatment or, if untreated, that has been symptomatic or clinically significant.

Sections 67.111(a)(3) and 67.211(c) contain the same requirement for first- and second-class medical certificates, respectively.

and 67.311(c). Dr. Tilton based his determination on petitioner's history of ischemic coronary artery disease, which required treatment with Toprol, which is a prescription medication.[3] The Administrator's motion also asserted that petitioner's airman medical record supported Dr. Tilton's determination, and that petitioner underwent exercise stress tests in 2004 and 2006 that both revealed that petitioner had inferior wall ischemia.[4] The Administrator's motion summarizes the results of petitioner's stress tests, and states that, in response to the results of petitioner's 2004 exercise stress test, Dr. Schwartz prescribed petitioner 50 mg of Toprol per day, and that in response to the results of petitioner's 2006 exercise stress test, Dr. Schwartz reiterated these findings and kept petitioner on Toprol. The Administrator's motion also references the review of Milton J. Sands, M.D., who is a cardiology consultant for the Administrator. Dr. Sands reviewed petitioner's medical records and concluded that petitioner had,

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[3] Evidence in the record indicates that Toprol is a beta blocker that reduces myocardial oxygen demand, thereby protecting a heart muscle that is vulnerable to ischemia. Mot. for Summ. J., Attach. 2 (Decl. of Michael A. Berry) at ¶ 5.

[4] The Administrator's motion defines inferior wall ischemia as reversible loss of blood flow to the heart's bottom artery. Mot. for Summ. J. at ¶ 5. Additional evidence in the record defines inferior cardiac wall ischemia as "inadequate oxygen supply to the heart muscle." Berry Decl. at ¶ 5.

"at least, single vessel coronary artery disease." Mot. for Summ. J., Attach. 1 at 14. The Administrator concluded the motion for summary judgment by stating that sections 67.111(a)(3), 67.211(c), and 67.311(c) provide standards for airman medical certification that are specifically disqualifying for airmen who do not meet the standards, and that Dr. Tilton had also denied a special issuance of a medical certificate pursuant to 14 C.F.R. § 67.401. Given that the regulations state that coronary heart disease requiring treatment is specifically disqualifying, the Administrator argued that a hearing on petitioner's petition would serve no purpose, and that summary judgment was therefore the appropriate means for disposing of the case. Petitioner contested the Administrator's motion.

The law judge granted the Administrator's motion for summary judgment, based on the evidence indicating petitioner's ischemia. In particular, the law judge stated that petitioner's diagnosis of ischemia was based on the results of two diagnostic studies, and that reports from petitioner's medical providers listed ischemia. The law judge cited Schwartz v. Helms, 712 F.2d 633 (D.C. Cir. 1983), in which the United States Court of Appeals for the District of Columbia Circuit affirmed the Administrator's authority to deny medical certificates for

certain reasons. The law judge also noted that the Schwartz court concluded that the Board cannot reverse the Administrator's decision concerning a medical certificate when a specific, disqualifying condition is the cause of the denial or revocation of the medical certificate. Id. at 637. The law judge also recognized that the Administrator has considerable discretion to deny the special issuance of a medical certificate, such that the Board has no jurisdiction to review the Administrator's decision concerning special issuances. The law judge concluded that the Administrator had established that petitioner had been diagnosed with ischemia, and that a hearing concerning the Administrator's denial of a medical certificate for petitioner would serve no purpose.

On appeal, petitioner contends that he satisfied the requirements of the exercise stress tests that led to his diagnosis; that Dr. Sands does not realize the extent of his condition; and that he should be eligible for a medical certificate from the Administrator because he has long held a commercial driver's license (CDL) from the Department of Transportation (DOT). In particular, petitioner asserts that he maintained the recommended heart rate of 150 beats per minute for 12 minutes during one of the exercise stress tests, and that his "ejection fraction" measured at 64 percent, which is within

the acceptable range of 55 percent to 75 percent. Petitioner also contends that Dr. Sands did not "definitively say" that petitioner had coronary disease, but instead opined that he thought petitioner had significant coronary disease, and that the magnitude of the risk that the disease presented was "uncertain." Finally, petitioner asserts that he holds a valid CDL, for which DOT required him to complete a comprehensive medical exam; as such, petitioner contends that his eligibility for a CDL indicates that he should also be eligible for an airman medical certificate. The Administrator contests each of petitioner's arguments and urges us to affirm the law judge's decision.

None of petitioner's arguments presents a reason for reversal of the law judge's decision. First, the evidence in the record indicates that petitioner underwent two exercise stress tests, both of which resulted in a finding that petitioner had ischemia that required medication. While petitioner's performance on the stress tests and his "ejection fraction" measurement are satisfactory, these factors do not obviate or function to dispute petitioner's diagnoses of ischemia, nor do they explain petitioner's need for Toprol.

In addition, petitioner's arguments concerning Dr. Sands's assessments of his condition are also not persuasive.

Dr. Sands's letters to petitioner's doctors clearly stated that petitioner had "some objective evidence of myocardial ischemia." Letter from Sands to Moll, Dec. 1, 2006. In addition, Dr. Sands wrote that, "[t]he ST [stress test] segment depression and nuclear imaging are consistent with, at least, single vessel coronary artery disease," and that, "[t]he test is strongly positive even though [petitioner] had excellent exercise tolerance." Letter from Sands to DeVoll, Oct. 15, 2007. Dr. Sands concluded his assessment by stating that his opinion was that petitioner had "significant coronary disease," and that petitioner's treating cardiologist shared this opinion. Id. Moreover, petitioner's arguments concerning Dr. Sands's assessments ignore the existence of other evidence regarding his medical history in the record, such as reports concerning petitioner's stress tests, which indicated that petitioner had ischemia, and correspondence from Dr. Schwartz, who prescribed Toprol for petitioner.

Finally, petitioner's argument that he should be eligible for an airman medical certificate because he has a CDL is equally unavailing. The proposition that CDL certification must lead to airman medical certification begs a comparison of incongruent, dissimilar standards. Petitioner's eligibility for a CDL does not indicate that he is eligible for an airman

medical certificate; moreover, the Board does not have jurisdiction to review the Department of Transportation's decisions concerning CDL eligibility. Here, the record indicates that petitioner has undergone specific cardiology examinations that resulted in a diagnosis of ischemia, for which petitioner takes prescription medication. Under 14 C.F.R. §§ 67.111(a)(3), 67.211(c), and 67.311(c), such a diagnosis is a disqualifying condition. Schwartz, 712 F.2d at 639 (deferring to Administrator's interpretation of FAA regulations that provide that coronary heart disease is a disqualifying condition, because "coronary heart disease is by nature progressive and … its rate of change is difficult to predict").

In conclusion, summary judgment was the appropriate means for disposing of this case, as the record clearly indicates that petitioner has a condition that is specifically disqualifying. As such, we affirm the law judge's order.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied;

2. The order of the law judge granting the Administrator's motion for summary judgment is affirmed; and

3. The denial of petitioner's application for a medical certificate under 14 C.F.R. §§ 67.111(a)(3), 67.211(c), and 67.311(c) is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

Served: February 29, 2008

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

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Petition of

NELSON F. TCHAKIRIDES

for review of the denial by the Administrator of the Federal Aviation Administration of the issuance of an airman medical certificate.

Docket SM-4861

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ORDER GRANTING ADMINISTRATOR'S
MOTION FOR SUMMARY JUDGMENT

Served: Nelson F. Tchakirides
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(BY CERTIFIED MAIL)

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(BY FAX)

On November 8, 2007, the Federal Air Surgeon informed petitioner by letter that his application for a third-class airman medical certificate had been denied, on the basis that "[t]he available medical evidence reveals a history of ischemic coronary artery disease requiring treatment with medication (Tropol)," which made him ineligible for such certification under §§ 67.111(a)(3), 67.211(c) and 67.311(c) of the Federal Aviation Regulations ("FAR," codified at 14 C.F.R.).[1] Thereafter, on November 19, 2007, this office received from petitioner, who is acting *pro se*, a petition for review of that

[1] The aforesaid FARs contain similar language, but apply to first-, second- and third-class medical certificates, respectively. As the Federal Air Surgeon's denial in this matter relates to an application for a third-class medical certificate, the applicable provision is § 67.311(c), which reads as follows:

"§ 67.311 Cardiovascular.
Cardiovascular standards for a third-class airman medical certificate are no established medical history or clinical diagnosis of any of the following:

* * * * *

(c) Coronary heart disease that has required treatment or, if untreated, that has been symptomatic or clinically significant."

certificate denial. The Administrator of the Federal Aviation Administration ("FAA"), through counsel, subsequently filed an answer to that petition on December 21, 2007, and the matter was then set for hearing on March 4, 2008.

On February 7, 2008, the Administrator's counsel filed a motion for summary judgment in this matter, in which it is asserted that the parties' pleadings and other supporting documentation establish a series of indisputable facts, under which the Administrator is entitled to judgment as a matter of law. A reply in opposition to that motion was later received from petitioner on February 20, 2008. Upon a thorough review of the Administrator's motion, petitioner's reply and the record in this proceeding as a whole, the undersigned will, for the reasons set forth below, grant the motion for summary judgment and terminate this proceeding on that basis.

The Administrator has, in connection with the summary judgment motion, provided a certified copy of petitioner's medical records file, which discloses that, on a medical certificate application (FAA Form 8500-8) he completed on November 2, 2006, petitioner responded to Question 17.a., which asked whether he was currently using any prescription or nonprescription medication, by listing several medications, including "Toprol XL 50." Also contained in the medical records file is a November 9, 2004 roentgenographic report from the Griffin Hospital, in Derby, Connecticut, which relates that petitioner experienced "increasing shortness of breath" and had a strong family history of coronary artery disease. According to that report, petitioner was given a Bruce protocol stress test with performance of stress and rest view Single Photon Emission Computed Tomography ("SPECT") reconstruction imaging. The report relates that the SPECT imaging disclosed findings representative of "minimal ischemia superimposed on preexisting disease." A subsequent roentgenographic report from Griffin Hospital, dated November 6, 2006, reveals that, on resting and stress myocardial profusion imaging, findings "consistent with mild stress-induced ischemia" were disclosed.

The medical records file also contains reports from Kenneth V. Schwartz, M.D., of Cardiology Associates of Derby, P.C., of two clinical assessments of petitioner. The first, dated November 19, 2004, noted that he had no cardiac complaints. Specifically, he denied having chest pain, shortness of breath, palpitations, orthopnea, paroxysmal nocturnal dyspnea, ankle edema, dizziness or syncope. An electrocardiogram was interpreted as showing a small, incomplete right bundle branch block and lack of an R-wave in V-2. Dr. Schwartz reviewed the November 9, 2004 stress test results and concluded that petitioner had some objective evidence of coronary disease, and "recommended he take Toprol 50 mg daily to limit his heart rate below the ischemic threshold." Dr. Schwartz' second report, dated December 1, 2006, indicated that petitioner continued to deny having any cardiac complaints, and that he was still taking 50 milligrams of Toprol per day. Dr. Schwartz noted that the November 6, 2006 stress test showed "some ischemic type ST-T wave abnormalities," and that "[n]uclear imaging showed inferoseptal ischemia with a normal ejection fraction of 64%, which looks similar to his previous test." He concluded that petitioner "ha[s] some objective evidence of myocardial ischemia. He is on a good medical regimen at this time."

In his one-page submission in reply to the Administrator's motion for summary judgment, petitioner states, "I intend to offer documentation showing that I fall within the normal ranges for heart related conditions even using the FAA's own experts, generally accepted medical facts put forth by leading medical practitioners and published FAA

statistics. . . . I therefore request that my hearing go forward." He also acknowledges, in a section headed "Response to Interrogatories," that he is taking 50 milligrams of Tropol-XL daily.

According to the *Physician's Desk Reference* at 668-70 (61st ed. 2007), Tropol-XL is a beta-blocking agent that is indicated for the treatment of hypertension, angina pectoris, and heart failure attributable to ischemia, hypertension and cardiomyopathy.

Based on the above, it is undeniable that petitioner has a medical history of cardiovascular disease (ischemia) that has required treatment (medication). Ischemia, while characterized as "minimal" or "mild," has been revealed on two diagnostic studies, that diagnosis has been confirmed by a cardiologist, and said cardiologist has prescribed for petitioner a medication regimen of 50 milligrams of Tropol-XL per day. In view of this, it cannot be disputed that petitioner fails to meet the criteria for unrestricted third-class medical certification under FAR § 67.311(c).

The validity of the regulations that disqualify applicants having an established medical history of coronary heart disease that has required medical treatment from unrestricted airman certification has previously been sustained by the United States Court of Appeals for the District of Columbia Circuit in *Schwartz v. Helms*,[2] upon a challenge that such restrictions limit the scope of the Board's inquiry on review and, thus, do not permit consideration of evidence as to the degree of future medical risk presented by the specifically disqualifying condition's symptomatology. Under *Schwartz*, once it is established that an applicant for a medical certificate has a specifically disqualifying condition, the Board is powerless to reverse the denial of certification by the FAA.[3] Accordingly, where, as here, the existence of a specifically disqualifying condition is established, a hearing would serve no useful purpose.[4] Because petitioner's established medical history of cardiovascular disease that has required treatment thus renders him unqualified for an unrestricted third-class medical certificate under FAR § 67.311(c), the Administrator's motion for summary judgment must be granted.

While the Federal Air Surgeon also noted in the November 8, 2007 denial letter that petitioner had been considered, but found not medically qualified, for a special issuance (restricted) medical certificate under FAR § 67.401, petitioner may again seek special issuance status in the future. He should, however, be aware that the grant or denial of special issuance status is *wholly within the FAA's discretion*, and the Board has no jurisdiction whatsoever to review such a determination by the FAA.[5]

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[2] 712 F.2d 633 (1983).

[3] 712 F.2d at 637. *See also Petition of Hukari*, 2 NTSB 597, 598-99 (1977); *Petition of Berry*, 4 NTSB 589, 590 (1983).

[4] *See Petition of Dale*, 4 NTSB 338 (1982), reconsideration denied 4 NTSB 340 (1982) (the existence of a specifically disqualifying condition leaves "no real issue before the Board," and, thus, renders unnecessary a hearing on review of a denial of medical certification by the FAA).

[5] In this regard, *see*, *e.g.*, *Petition of Doe*, 5 NTSB 41, 43 (1985); *Petition of Sleeter*, 5 NTSB 686, 688-89 (1985); *Petition of Reder*, NTSB Order EA-4438 (1996).

THEREFORE, IT IS ORDERED that the Administrator's motion for summary judgment in this matter is GRANTED, and that this proceeding is hereby TERMINATED.

Entered this 29th day of February, 2008, at Washington, D.C.

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William E. Fowler, Jr.
Chief Judge